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18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**  
20 **WESTERN DIVISION**

21 OCEANA, INC.,

22 Plaintiff,

23 v.

24 WILBUR ROSS, in his official  
25 capacity as Secretary of the U.S.  
26 Department of Commerce;  
NATIONAL OCEANIC AND  
ATMOSPHERIC  
ADMINISTRATION; and  
NATIONAL MARINE  
FISHERIES SERVICE,

Defendants.

NO. 2:17-cv-05146 RGK-  
JEMx

**NOTICE OF MOTION AND  
MOTION FOR LEAVE TO  
FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF  
PLAINTIFF**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** the State of Washington hereby moves  
the Court for leave to file a brief *amicus curiae* in the above-captioned case in

1 support of Plaintiff. A copy of the proposed *amicus* brief is attached as an exhibit  
2 to this motion.

### 3 I. LEGAL STANDARD

4 District courts have broad discretion in granting leave to participate as  
5 *amicus curiae*. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). While there  
6 is no specific rule on when such leave is proper, this discretion is liberally applied  
7 when the legal issues in a case “have potential ramifications beyond the parties  
8 directly involved.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.  
9 Supp. 2d 1061, 1067 (N.D. Cal. 2005). Indeed, the “classic role” of *amicus curiae*  
10 is filled in cases that involve the general public interest, including the interpretation  
11 and status of the law. *Funbus Systems, Inc. v. State of Cal. Pub. Util.s Comm’n*,  
12 801 F.2d 1120, 1125 (9th Cir. 1986) (referencing *Miller-Wohl Co. v.*  
13 *Commissioner of Labor & Industry*, 694 F.2d 203, 204 (9th Cir. 1982)); *Cnty.*  
14 *Ass’n for Restoration of the Env’t. (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp.  
15 2d 974, 975 (E.D. Wash. 1999). Leave is also typically granted where the *amicus*  
16 has a “perspective that can help the court beyond the help that the lawyers for the  
17 parties are able to provide.” *CARE*, 54 F. Supp. 2d at 975.

### 18 II. STATEMENT OF IDENTITY AND INTEREST OF AMICUS 19 CURIAE

20 The current case involves allegations that the United States Secretary of  
21 Commerce, through a delegation of authority to the National Oceanic and  
22 Atmospheric Administration (NOAA) and the National Marine Fisheries Service  
23 (NMFS), violated the law by refusing to publish a final regulation related to the  
24 California drift gillnet fishery. The regulation, proposed by the Pacific Fishery  
25 Management Council, sought to reduce the amount of “bycatch” of protected  
26

1 marine species, including endangered whales and sea turtles that frequent  
2 Washington waters.

3 Washington's interest in the resolution of this issue is significant. The  
4 regional fishery management councils are the only direct role that States have to  
5 shape federal fishery rules. Because Washington's fisheries are within the  
6 jurisdiction of the Pacific Council, Washington, through its designated regulatory  
7 agency, the Washington Department of Fish and Wildlife, is permanent member  
8 of the Pacific Council. In this capacity, Washington participated directly in crafting  
9 the proposed regulation at issue in this case. Washington, thus, has a vested interest  
10 in ensuring that NMFS properly adheres to the Magnuson-Stevens Act's  
11 procedures for review of regional councils' fishery management plans and  
12 implementing regulations—both as related to current drift gillnet regulation and  
13 other regulations that may be put forward by the Pacific Council in the future.

14 Washington and its residents also have a significant interest in benefits  
15 provided to the species targeted for protection by the proposed regulation. Many  
16 of the species vulnerable to bycatch under the California drift gillnet fishery are  
17 migratory in nature and frequent Washington waters, including humpback and  
18 sperm whales, sea turtles (leatherback, loggerhead, and green turtles), and a host  
19 of other marine animals. Because many of these species are listed as endangered  
20 or threatened under Washington State law, Washington expends significant  
21 resources on protecting these species and their habitat. These efforts are  
22 undermined by bycatch in the California drift gillnet fishery, particularly when  
23 Washington has for decades prohibited the use of drift gillnets in state coastal  
24 waters because of the adverse impacts of bycatch. As NMFS has acknowledged,  
25 the Pacific Council's rule—if implemented—will likely decrease bycatch rates.  
26 As a result, NMFS's reversal of its original affirmative decision on the proposed

1 regulation means that neither the anticipated reduction of bycatch of protected  
 2 species, nor Washington's burden of protecting these species, will be lessened.

### 3 **III. *AMICUS CURIAE*'S EXPERTISE WILL BENEFIT THE COURT**

4 As a permanent member of the Pacific Fishery Management Council and  
 5 a participant in crafting the regulation at issue in this case, Washington has  
 6 considerable and specific knowledge regarding the California Drift Gillnet  
 7 Fishery, its impacts to the Pacific coastal region, and the need to regulate the  
 8 fishery to prevent unacceptable impacts to protected species. Additionally, as a  
 9 participant in the Pacific Council since its inception, Washington also has  
 10 valuable insight into the Magnuson-Stevens Act's de-centralized, regional  
 11 approach to fisheries management as well as an understanding of how Congress  
 12 has shaped the Magnuson-Stevens Act over the years to respond to shortcomings  
 13 in fisheries policy. Because the named parties do not fully represent this  
 14 perspective, Washington's proposed *amicus* brief provides unique context that  
 15 will assist the Court. *See Funbus Systems, Inc.*, 801 F.2d at 1125; *CARE*, 54 F.  
 16 Supp. 2d at 975.

17 Defendants in this case also take a broad read of the Magnuson-Stevens  
 18 Act and its process for approving fisheries regulations drafted by regional  
 19 councils. Defendants' reading, if adopted by this Court, would arguably apply to  
 20 future regulations proposed by the Pacific Council. As a result, it is also  
 21 especially important for the Court to consider Washington's view—as a  
 22 permanent Pacific Council member—that Defendants' failure to act in this case  
 23 directly contradicts Congress' intent that NMFS's review of proposed regulations  
 24 not delay what a regional council views as necessary to implement a regional  
 25 council's fishery management plan.  
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**IV. CONCLUSION**

For the foregoing reasons, the Washington respectfully requests this Court's leave to file the attached *amicus* brief.

DATED this 27th day of August, 2018.

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DATED: August 27, 2018 KENDALL BRILL & KELLY LLP

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